

303-866-9399

January 2, 2003

Mattie C. Condray
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Office of Legal Affairs
Legal Services Corporation
750 1st St., N.E., Suite 1110
Washington, D.C. 20002-4250

Re: Comments on Proposed Regulation
45 C.F.R. Part 1602-Freedom of
Information Act Procedure

Dear Ms. Condray:

Colorado (CLS) submits the following comments on the Legal Services Corporation's proposed revisions to its Regulation on the Freedom of Information Act (FOIA) Procedure, 45 C.F.R 1602, published in the Federal Register on November 18, 2002. CLS generally supports the proposed revisions to the Regulation and wishes to comment on only a very few of proposed revisions. The Regulation, pursuant to the Freedom of Information Act should provide full access to Legal Services Corporation information and records while respecting and protecting confidential and privileged information regarding recipients of Legal Services Corporation (LSC) funding as well as protecting the legitimate confidentiality interests of clients, staff and employees of a recipient of LSC funding.

CLS supports the incorporation in the Regulation of the provision that protects the rights of those who have submitted a grant application to LSC to notification of a request to LSC for disclosure of such information and an opportunity to object to LSC and request that the information contained in the grant application not be disclosed. The same provision should apply to other information that might arguably be covered by the exemption for trade secrets contained in 1602.9. The proposed Regulation should require notification to a recipient of LSC funds of requests submitted to LSC for information and provide the recipient of LSC funds with an opportunity to object to the disclosure of information that may arguably be protected under any of the FOIA exemptions, but most particularly those requests for information that raise issues of personal privacy and confidentiality concerns of clients, staff and employees of recipients of LSC funds. Recipients of LSC funds are legally required by the LSC Act, Regulation and Grant Conditions to submit a wide variety of information to LSC ranging from client financial eligibility information to notice of claims of alleged employment discrimination, disciplinary actions taken against program staff, possible sanctions requested against the program or its staff, the theft of program property and the like. If such information is requested from LSC it is reasonable that the recipient of LSC funding be notified by LSC and

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provided an opportunity to raise claims of protection asserting that the requested information is “personnel and medical files and similar files the disclosure of which would constitute clearly unwarranted invasion of personal privacy” (1602.9 Exemption 5) and/or are “records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information could reasonably be expected to constitute an unwarranted invasion of personal privacy” (1602.9 Exemption 6).

The proposed Regulation should be modified to clearly and specifically require that a recipient of LSC funds be notified of a request for information and provided an opportunity to object to the release of such information in the first instance, although the ultimate authority to release the information might legitimately be retained by LSC. The recipient of LSC funds should be provided the opportunity to present its claim that personal privacy concerns would be adversely and unfairly impacted by the release and disclosure of the information requested to be disclosed by LSC.

The provision of the proposed Regulation which provides LSC with the authority to cease processing new requests for information when the party requesting the information has not paid prior fees that are overdue for more than 30 days is reasonable provided the proposed Regulations is clarified to exclude any past due fees that are in dispute and are the subject of a pending appeal or a law suit. LSC should not require a party requesting information to pay fees that are the subject of an appeal before LSC is required to process other or additional FOIA requests.

The proposed Regulation provides helpful guidance regarding the circumstances under which fees for FOIA requests may be waived by LSC. It is respectfully submitted that fees should be waived for virtually all requests from the legal services community, from recipients of LSC funding, and the low-income community that recipients of LSC funding serve. To the extent that the clarification enhances the likelihood that fee waivers will be liberally granted they are beneficial and appropriate.

An increase in the fees charged by LSC for searches and photocopying in that the increased fees reflect more accurately LSC’s actual costs are reasonable provided that fee waivers are liberally provided to recipients of LSC funding and clients the recipients of LSC funding serve.

CLS appreciates the opportunity comment on the proposed revisions to the Regulation on Freedom of Information Act Procedure, 45 C.F.R. Part 1602, and looks forward to the adoption of a further revised and improved Regulation. If you have any questions concerning these comments, or if CLS or I may be of any further assistance in your consideration of the proposed Regulation, please let me know at your convenience.

Respectfully,

Jonathan D. Asher
Executive Director

JDA/sm